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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 U-HAUL CO. OF NEVADA, INC., *et al.*,

10 Plaintiffs,

11 v.

12 GREGORY J. KAMER, LTD., *et al.*,

13 Defendants.  
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Case No. 2:12-CV-00231-KJD-CWH

**ORDER**

15 Before the Court is Defendant Gregory J. Kamer, LTD.'s ("Kamer") Partial Objection to  
16 Order Regarding Motion to Compel Deposition Testimony and Production of Documents (#229).  
17 Plaintiff U-Haul Co. of Nevada, Inc., ("U-Haul") responded (#239). Kamer has exceeded the  
18 deadline to reply by more than three months. The Order objected to is #218.

19 **I. Background**

20 The parties and the Court are familiar with the procedural and factual background in this  
21 case. Therefore, the Court will provide only a brief recitation of the facts and circumstances  
22 relevant to the motion at issue. Plaintiffs retained Kamer to represent them in several consolidated  
23 National Labor Relations Board ("NLRB") unfair labor practice proceedings. NLRB General  
24 Counsel appointed Nathan W. Albright ("Albright") and Steven Wamser to prosecute Plaintiffs.  
25 After an affair between NLRB prosecutor Albright, and a Kamer paralegal, Debra Wilcher  
26 ("Wilcher"), came to light, Plaintiffs enlisted the services of other law firms ("Subsequent Law

1 Firms”) to reopen the NLRB Proceedings. Plaintiffs eventually settled the NLRB Proceedings and  
2 brought this action against Kamer and Wilcher for malpractice related claims alleging improper use  
3 of confidential information in the NLRB Proceedings that resulted in Plaintiffs incurring substantial,  
4 unnecessary legal fees.

5 Kamer contends that Magistrate Judge Hoffman’s Order (#218) is clearly erroneous in failing  
6 to waive both attorney-client privilege and the work-product doctrine as to documents held by U-  
7 Haul’s Subsequent Law Firms.

## 8 II. Standard of Review: Clearly Erroneous

9 A District Judge should modify or set aside a Magistrate Judge’s Order if it is clearly  
10 erroneous or contrary to law. See Fed. R. Civ. P. 72; LR IB 3-1. To be clear, Defendant’s burden is  
11 high. Not only must Defendant persuade the Court that Defendant is indeed correct, but it must also  
12 demonstrate that the Magistrate Judge was in clear error.

## 13 III. Analysis

### 14 A. Attorney-Client Privilege

15 “In a civil case, state law governs privilege regarding a claim or defense for which state law  
16 supplies the rule of decision.” Fed. R. Evid. 501. In Nevada, as a general rule, “[a] client has a  
17 privilege to refuse to disclose, and to prevent any other person from disclosing, confidential  
18 communications” relating to attorney representation. NRS 49.095. However, “a party waives his  
19 privilege if he affirmatively pleads a claim or defense that places at-issue the subject matter of  
20 privileged material over which he has control.” Wardleigh v. Second Judicial Dist. Court, 891 P.2d  
21 1180, 1186 (Nev. 1995). “Therefore, at-issue waiver occurs when the holder of the privilege pleads a  
22 claim or defense in such a way that eventually he or she will be forced to draw upon the  
23 privileged communication at trial in order to prevail, and such a waiver does not violate the policies  
24 underlying the privilege.” Id. In such cases, at-issue waiver is treated as an “anticipatory waiver”  
25 because it anticipates a waiver will occur at trial because “the party asserting the privilege bears the  
26 burden of proof on an issue and can meet that burden only by introducing evidence of a privileged

1 nature.” Id. “In other words, where a party seeks an advantage in litigation by revealing part of a  
2 privileged communication, the party shall be deemed to have waived the entire attorney-client  
3 privilege as it relates to the subject matter of that which was partially disclosed.” Id. At bottom, if a  
4 plaintiff raises an issue, and the evidence needed to prove the issue “necessarily comes from  
5 privileged documents, fairness requires that the privilege be waived.” Id.

6 Here, U-Haul asserts that it “has not and will not use privileged information to prove any of  
7 its claims.” (#239, 4:9-12). Thus, because Plaintiff will not use the privileged documents in  
8 supporting their claims, no issue of selective production and consequent unfairness exists. Defendant  
9 Kamer makes two arguments to support its position; first, a “malpractice” argument and second, a  
10 “redacted records” argument.

11 First, Kamer suggests that they might allege malpractice by the Subsequent Law Firms if  
12 privileged documents reveal such malpractice. (#229, 4:11-16). However, Kamer acknowledges that  
13 it currently has “no information” on this topic. Such fishing expeditions are generally inappropriate  
14 in the normal course of discovery. To represent to the Court that such an expedition is appropriate  
15 justification for waiving the attorney-client privilege is absurd.

16 Second, Kamer alleges that it is unable to attack the alleged damages via the billing  
17 statements provided by U-Haul because they are redacted. (#229, 4-5). This is surprising, considering  
18 that the Magistrate Judge explicitly ordered U-Haul to provide unredacted billing statements in the  
19 very Order Kamer is objecting to. (#218, 7:13-15). If Kamer’s argument is that U-Haul has failed to  
20 produce unredacted billing statements, the appropriate course of action is to file a motion to compel  
21 production. If Kamer’s argument is that the Court should order unredacted copies to be provided to  
22 Kamer, the Magistrate Judge already provided this relief. Accordingly, Kamer’s argument on this  
23 point is in error.

#### 24 B. Work-Product Doctrine

25 The work product doctrine provides a broader protection than the attorney-client privilege  
26 and is designed to protect the right of an attorney to thoroughly prepare his case and to preclude a

1 less diligent adversary attorney from taking undue advantage of the former's efforts. See Hickman  
2 v. Taylor, 329 U.S. 495, 511 (1947). It has been held, however, that the work product doctrine  
3 protects materials prepared for any litigation or trial so long as they were prepared by or for a party  
4 to the subsequent litigation. Federal Trade Comm'n v. Grolier Inc., 462 U.S. 19, 25-26 (1983).  
5 "[T]he general policy against invading the privacy of an attorney's course of preparation is so well  
6 recognized and so essential to an orderly working of our system of legal procedure that a burden rests  
7 on the one who would invade that privacy to establish adequate reasons to justify production[.]"  
8 Hickman, 329 U.S. at 512. However, "[w]here relevant and non-privileged facts remain hidden in an  
9 attorney's file and where production of those facts is essential to the preparation of one's case,  
10 discovery may properly be had. Id.

11 Kamer argues that the work-product protections should be found waived so that it can  
12 determine "what efforts were truly made by subsequent law firms to determine the effects [U-Haul's  
13 damages] complained of and what those conclusions were." It is less than clear how Subsequent Law  
14 Firms' efforts and conclusions regarding U-Haul's damages are directly relevant to either U-Haul's  
15 or Kamer's case, as the questions of causation and damages are before the Court. The opinions of  
16 Subsequent Law Firms on these questions are simply irrelevant. Thus, Kamer has not borne its  
17 burden to establish adequate reasons to justify production of these protected documents. Further, the  
18 Court does not find "clear error" in the Magistrate Judge's Order.

19 IV. Conclusion

20 **IT IS HEREBY ORDERED** that Defendant Kamer's Partial Objection to Order Regarding  
21 Motion to Compel Deposition Testimony and Production of Documents (#229) is **DENIED**.

22 DATED this 19th day of August 2013.

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26 Kent J. Dawson  
United States District Judge